



5. Defendant UVL is unaware of any rule or law providing for or permitting telephonic hearings.

6. Counsel for Defendant UVL is unaware of any Rule of Civil Procedure establishing a process for telephonic hearings or the conduct of a telephonic hearing.

7. In *Eller v. Trans Union, LLC*, 739 F.3d 467 (10<sup>th</sup> Cir. 2013), the Court specifically held that a district court did not abuse its discretion when it refused to allow plaintiff to present testimony via telephone when plaintiff proffered no unexpected reason for witnesses absence and offered no evidence that testimony was necessary to present plaintiff's case. *See also, Dagen v. CFC Group Holdings, LTD*, 2003 WL 22533425 (S.D. N.Y. 2003)(holding that employer established good cause to allow witnesses to testify by telephone when witnesses were located in Hong Kong and employer raised concerns of international travel, business operations, and costs).

8. Plaintiff's counsel did not file a motion requesting telephonic participation of witnesses or state why proceeding in this manner would be necessary.

9. Plaintiff's counsel has offered no good cause as to why witnesses cannot be present live to present testimony at the June 11, 2019 hearing.

10. Plaintiff has not established good cause to permit testimony by telephone at the Section 216(b) hearing on June 11, 2019.

11. No proffer was made to explain the unavailability of witnesses, despite knowing the hearing date for months.

12. Plaintiff's counsel had sufficient time to gather his witnesses and have them attend the June 11, 2019, hearing to present live testimony and preserve United Vision Logistics' procedural due process rights.

13. Counsel for Defendant UVL is unaware of the nature and extent of the witness' testimony that counsel for Plaintiff is proposing.

14. Counsel for Defendant UVL is unaware whether these witnesses will utilize items or information to inform their testimony while they testify over the telephone.

15. Said items or information have not been provided to counsel for Defendant UVL.

16. Should Plaintiff present testimony of unidentified witnesses via telephone at the June 11, 2019, hearing, the procedural due process rights of Defendant UVL will be violated as Defendant UVL was operating under the expressed understanding that no witness testimony was to occur at the June 11, 2019, hearing.

17. As of the writing of this motion, Defendant UVL still has no idea of the identity of the proposed witnesses; no names, no addresses, nor any proffer of what these witnesses may testify to; all of which is highly prejudicial to Defendant UVL.

18. Allowing Plaintiff to present testimony of unnamed witnesses will violate United Vision Logistics' procedural due process rights. Additionally, should Plaintiff present testimony without a proffer of the substance of said testimony, United Vision Logistics' due process rights to confront the adverse witnesses.

19. Where, as here, Plaintiff's counsel has advised the Court that no witness testimony would be occurring at a hearing that has been noticed by Order of Court for over two (2) months, allowing Plaintiff to now proceed in this fashion is improper and prejudicial to the Defendant UVL.

**WHEREFORE**, Defendant United Vision Logistics respectfully requests that this Honorable Court enter the attached Order, precluding Plaintiff from offering telephone testimony of witnesses at the June 11, 2019 hearing on Plaintiff's Motion for Conditional Certification.

Respectfully Submitted,

POERIO & WALTER, INC.

/s/ Robert P. Walter  
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**GLENWOOD JOHSNTON; et al**, on )  
behalf of themselves and similarly ) Civil Action No. 2:17-1617 NBF  
situated employees, )  
 )  
 )  
Plaintiffs, )  
 )  
 )  
vs. )  
 )  
 )  
**TITAN LOGISTICS & RESOURCES,** )  
**LLC; TONY DIGIAMBERDINE; and** )  
**UNITED VISION LOGISTICS,** )  
 )  
 )  
Defendants. )  
 )

AND NOW, this \_\_\_\_\_ day of June, 2019, for the reasons set forth in United Vision Logistics' Objections to Plaintiff Presenting Telephone Testimony at 216(b) Hearing, it is hereby **ORDRED, ADJUDGED, and DECREED**, that Plaintiff is prohibited from offering testimony via telephone.

Nora Barry Fischer  
District Court Judge

**Certificate of Service**

I hereby certify that on this 6th day of June, 2019, a true and correct copy of the foregoing **United Vision Logistics' Objections to Plaintiff Presenting Telephone Testimony at the 216(b) Hearing** was served on the following parties the ECF System:

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